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OCT - 3 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
Portals II, TW - A325
445 12th Street, SW
Washington, DC 20554

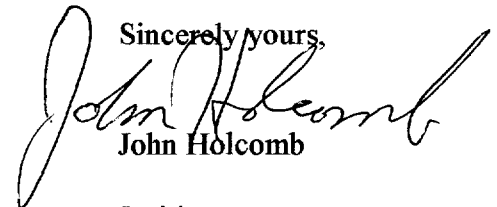
ATTN: Common Carrier Bureau

RE: A Private Citizen *Petition For A Declaratory Ruling To*
Terminate A Controversy Regarding 47 USC 227(a)(4)
and 47 C.F.R. 64.1200(f)(5); CC Docket No: 92 - 90

Dear Ms. Salas:

Enclosed please find the original and 15 copies of my *Petition for A Declaratory Ruling* pertaining to what " . . . prior express invitation or permission" means under federal law when sending and receiving unsolicited facsimile advertisements. Thank you.

Sincerely yours,



John Holcomb

Petitioner

Attachment

cc: Hon. Michael Powell, Chairman
Jane Mago, General Counsel
Dorothy Attwood, Chief,
Common Carrier Bureau
Michelle Walters, Esq.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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OCT - 3 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In The Matter Of:)

A Private Citizen Petition For A)

Declaratory Ruling To Terminate A)

Controversy Regarding 47 USC 227(a)(4))

and 47 C.F.R. Section 64.1200(f)(5))

CC Docket No: 92 - 90

**A PRIVATE CITIZEN PETITION FOR A
DECLARATORY RULING TO TERMINATE
A CONTROVERSY REGARDING
47 USC 227(a)(4) and 47 C.F.R. 64.1200(f)(5)**

Pursuant to 47 C.F.R. Chapter 1, Subpart A, Rule 1.2 of the Federal Communications Commission Rules, Petitioner John Holcomb respectfully seeks a Declaratory Ruling to terminate a controversy.

BACKGROUND AND INTRODUCTION

Petitioner received 19 different unsolicited facsimile advertisements from one company, totaling approximately 29 pages of unsolicited ads. Prior to receiving these fax advertisements, Petitioner had never heard of the company that sent the faxes, had never done any business with it, nor ever had any contact with any of that company's owners, employees or agents.

Petitioner and the company where the unsolicited facsimiles originated are members of a local trade organization which has thousands of members. The position of the sender of the faxes is that it had prior express or implied-express "invitation or permission" to fax unsolicited ads to any other member, based upon mere membership in the same trade organization.

In two different civil actions, a local El Paso County Court Magistrate and a County Court Judge adopted the above position, that "prior express" or implied-express invitation or permission is given by everyone, who joins a trade organization, to every other member of the same trade organization to fax unsolicited advertisements to any other member of the same trade organization. The ruling of the County Court Judge is on appeal.

DISCUSSION

For the above "trade organization" theory to be upheld on appeal and become part of Colorado case law would eviscerate the clear legislative and Rule making intent and purposes of 47 USC 227 and 47 C.F.R. 64.1200 to protect the business and personal use of and privacy in one's own fax machine, equipment and telephone line(s), and the freedom of association. Colorado case law would then be cited around the country destroying these federal protections.

DISCUSSION CONTINUED

For example, if the above organization membership permission theory prevails, a business man or woman who joins a chamber of commerce, a trade organization, risks having his or her fax machines jammed, literally put out of action, with unsolicited fax advertisements regarding "any property, goods or services" any other member is selling.

The following illustrates the absurdity of allowing the trade organization membership *express or implied - express unsolicited fax permission* theory to prevail. If such *membership permission* to fax unsolicited advertisements in violation of federal law exists, then, similarly, a trade organization member would also have *membership permission* to make unsolicited telephone calls to other members after the 9:00 p.m. prohibition in violation of federal law and FCC Rules. Both practices violate federal law. The federal law is the **one rule** – for everyone.

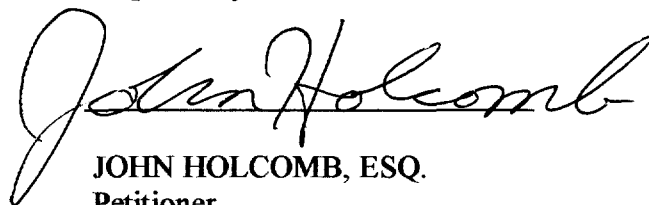
CONCLUSION

A person should be able to exercise his or her *First Amendment* right to join a trade organization and publish his or her fax and telephone numbers without his or her fax or phone numbers being misused in violation of federal law. Federal law 47 USC 227(a)(4) and 47 CFR 64.1200(f)(5) were designed to protect everyone, whether a member of an organization or not.

Implied invitation or permission is **not** given to other trade organization members to fax or receive unsolicited advertisements to other members by merely joining the organization - let alone the federal-law required **express** invitation or permission.

WHEREFORE, Petitioner asks the FCC to issue a formal Declaration that mere membership in a trade organization does not create or provide the required " . . . prior express invitation or permission" under 47 USC 227(a)(4) or 47 C.F.R. 64.1200(f)(5) to fax unsolicited advertisements to other members of the same trade organization.

Respectfully submitted,

A handwritten signature in cursive script, reading "John Holcomb".

JOHN HOLCOMB, ESQ.

Petitioner

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